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Blue Book

NAME _____

SUBJECT TORTS

INSTRUCTOR STOLNER

EXAM SEAT NO. _____ SECTION _____

DATE 4/21/11 _____ GRADE _____

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Causes of Action Patel (P) v Don and Dan (DD)

False Imprisonment - Intentional confinement

of another within fixed boundaries without consent or legal privilege.

WU students DD held the bathroom door

shut on the portable bathroom (porta potty)

they did so with the intention to confine

the occupant inside against their will.

As no reasonable person would consent to

be held in a porta potty we can infer that

it was not consented to, moreover the facts

state P ranged on the door angrily when he

discovered he could not get out.

False imprisonment of another requires that the person confined be aware of the confinement, thus from P's act of banging angrily we can infer he was aware of the confinement. The facts are silent as to how long P was in there, but any reasonable amount of time would be sufficient to show P was confined.

DD's will argue that they made a mistake and P is actually their friend, and they actually meant to entrap another EU student.

Their argument will fail because the harm they sought to cause the EU

student which was visited upon P instead will be deemed a transferred intent. This is a principle that stands for the idea that where one's volitional act of committing a tort (act) on one person and by mistake or other event the tort is visited upon another, the intent to do the act is transferred to the act upon plaintiff.

Thus DD's defense of mistake would fail and as stated supra P did not consent to the confinement (friend or no) thus DD will be liable to P for false imprisonment.

The facts are silent as to which of the DD's

was actually holding the door or, if both were. Because they are joint tortfeasors they will be held joint and severally liable for P's damages.

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Because they were acting in concert it will not matter which one did what act.

Assault

P will argue that DD's holding the door and tipping the porta potty placed him in apprehension of a harmful or offensive touching; and just as it began to tip he was sure that the possibility of being covered in human waste was presently

possible. The facts state that DD's overturned the porta-potty thus an intentional ^{to} act which there existed a substantial certainty the occupant would be exposed to contact with the human waste. (a harmful & offensive touching) The DD's are liable to P for assault.

Battery - Intentional harmful or offensive touching of another without consent or legal privileges.

P, will argue that ^{the act of} turning over a porta potty ^{with an occupant} is an act which is substantially certain to result in a harmful or offensive touching.

DD's will argue mistake and will be found liable due to transferred intent (supra) they meant to turn over a porta potty with some one in it.

Thus DD's will be liable to P for battery.

Trespass to Chattel - The intentional interference with the personal property of another which results in dispossession or damage, and absent legal privilege).

Here P was wearing clothing: shirt, pants shoes, perhaps a watch or cell phone on him as most college kids do.

The exposure to human waste to P's belongings would cause damage in the least amount requiring them to be laundered and disinfected. The stains made by human waste would damage 2 persons belongings if not completely require their disposal. Thus damage is likely shown and DD's are liable to P in that event:

Conversion - The intentional exercise of dominion and control over the personal property of another which is so severe as to require defendant to pay plaintiff.

Fair market value. As per above discussion of trespass to chattels, if

P's clothing and belongings are ruined

DD's will be liable to P for their full market value.

P v. W University (WU)

Negligence has four elements; Duty

Breach, Causation (Actual, Proximate),

Damages.

P will argue that the WU breached its

duty to the game visitors/spectators when

it allowed its students or (anyone else)

to turn over a porta potty with someone

inside. They had a duty to make sure that the facilities were safe for licensee's which is what the spectators were. The fact that the porta potties were not secured was negligent and so was the lack of security in light of the recent altercation of the previous game.

WU will argue that they did not breach their duty that they provided security and that this type of incident was not the type of harm they could have foreseen.

P will argue that as a "host" or landowner they had a duty to warn any licensee of

foreseeable harm and moreover their failure to make the premises secure they breached their duty as a landowner to make the porta potty's safe. Because a reasonable landowner (WU) would take the appropriate precautions to protect its visitors when they are most vulnerable (undressed/releiving themselves) in all circumstances and especially where there is notice of potential trouble as evidenced by the earlier fight (beating at EU).

P will argue that WU's failure to take the appropriate measures discussed above was a breach of a duty owed to P.

Thus, WU is likely in breach of a duty owed to P, not to expose him to an unreasonable risk of harm.

Actual Cause - P will argue that for WU's failure to execute their duty D's would not have pushed over the porta potty nor been able to confine him inside while so doing. WU is the actual cause of P's damage.

Proximate or legal cause

WU will seek to break the chain of causation here by claiming that the harm P suffered was not the type of harm they could or should have foreseen, furthermore the

criminal acts of the DD's were superceding events.

P will argue that according to the law following Polmis, that the harm/damage he suffered was a direct result of their breach thus they are liable to P for his damage. WV will argue the Wagon mound law, that the type of damage was unforeseeable thus they are not liable.

WD's assertion that the DD's acts are superceding will likely not prevail because there were no other intervening acts that occurred after their acts which cause P damage. WV is liable to P for damage to P.

P will also argue negligence on a vicarious liability theory respondeat

superior based on the WV's failure by the security guard to intervene.

The guard while in the course and scope of his work failed to execute his duty to aid either P or the subsequent ^{victim} victim.

Moreover if it is shown that there was negligence in employing the guard WV

will be liable in negligence to P for

providing an incompetent guard. Because

An employer is liable for the torts of his/her employee while acting in the course & scope of employment.

DP v. Patel.

Assault (supra) The facts state P

emerged enraged from the porta potty

and attacked the DD's. The facts are

silent on how far away they (DD's) were

from P. But a reasonable ordinary person

would be in apprehension of an angry

man covered in feces yelling angrily at

them as he advanced upon them with

a purpose to exact punishment. Moreover

(P is liable to the DD's for Assault)

The facts state that the DD's put up their

hands in retreat thus no longer the

aggressors and a "retreat" is not a defense to assault.

Battery (supra) The facts state that P

took 4 minutes to beat them up. Being

beat is a harmful touching, being beat by

a man covered in human waste is offensive

to ^{reas.} any person. Thus P is liable to DD's

for battery.

P will argue that in the moment and in a heat of passion he felt that he was being attacked and was acting in self defense.

Although P was attacked first by the DD's they had changed their position, and because of the duration of the beating 4 minutes, a claim of self defense will likely fail.

DD's v. WU

Negligence (supra) for the security guard's failure to intervene. DD's will have the same argument as P re: the guard.

WU will argue assumption of the risk as a defense as well as contributory negligence against the DD's. They were able to appreciate the risk of capturing a person in a porta potty and it would be entirely likely that the occupant would exact some retaliation for their voluntary act which they proceeded with on their own.

because they created the situation they will

2)
Peter V. Dave

Was Dave negligent when he hit Peter while texting while driving?

Negligence is an act that creates an unreasonable risk of harm to others. It contains 4

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is comprised of

elements: A duty is owed by the defendant to another; that duty is breached; the breach is the actual and proximate (legal) cause of; damages.

all drivers of vehicles owe a duty of due care not to hit other drivers on the road. Peter is owed a duty. That duty was breached when he texted while driving. A reasonable person knows that it is very dangerous to text while driving and therefore, Dave's actions fall below the standard of care required by a driver for the safety of others. This establishes both the duty and breach elements using the common law analysis.

In this case however, Duty and breach can also be proven if Negligence per se (NPS) can be proven. NPS can occur when someone violates a statute or law. The statute creates the duty and the standard of care - not to text while driving - that is required. It is negligence per se if the plaintiff can show that they are in the class of person that the law was enacted to protect, and if the harm inflicted was the type of harm that the law was enacted to protect against. In this case, the class of people to be protected are other drivers, and the harm is of being hit by one texting. Therefore negligence per se can be proven and this covers duty and breach. Further, NPS in most jurisdictions creates a rebuttable presumption of negligence. A presumption must be taken as fact by the jury (they cannot reject it) which results in a shifting of the burden of proof to the defendant to show why he was not neg by way of justification or defense. (In inference - which is usually the result of the res ipsa loquitur doctrine can be rejected by the jury and therefore cause no shift in the BOP).

Using the but for test - but for Dave texting Peter would not have been hit shows that Dave's actions are the actual cause. Proximate cause is also called legal cause and is actually looking at how far the scope of liability for actual cause will be taken. The proximate cause test is looking for things that will break the causal chain and allow the def. not to be held liable. There are 4 main ways this happens: remoteness in time or distance, unforeseeable type of harm; a superceding intervening act, and public policy reasons. In this case the issue will be foreseeability. Could it be foreseen that there would be a box of snakes and one would bite Peter causing harm? Under the Polemis approach to foreseeability, if the damage is directly caused (no intervening parties) and some type of harm could be foreseen, then the defendant is liable for all types of damage that result, foreseeable or not. Under this scenario - it is foreseeable that harm could result from an accident, therefore Dave's actions are the proximate cause.

The wagon mound cases however interpret foreseeability a bit differently. Using their analysis, only foreseeable types of harm are the liability of the defendant. In this case, it is probably not foreseeable that an accident would result in a snake bite injury - therefore no liability and the causal chain is broken.

Either way you consider proximate cause, damages exist, so the negligence rests on whether Dave is found to have proximately caused the harm to Peter.

Was Dave Negligent in not helping Peter after he asked for his information?
Negligence is supra.

Dave owes a duty to Peter because it was Dave's actions that created the risk to Peter. when a defendant creates the risk of harm, then he creates a relationship between them that brings with it a duty to help. In this case the accident which Dave created, results in Peter needing medical attention. the duty is created and then breached when Dave leaves without helping. But for his actions, Peter would not have lost his arm. There are no superceding intervening causes, it is not remote, and the type of harm if foreseeable - injury to arm from poisonous snake bite. The amputation may not be foreseeable, but certainly damage to the arm, which makes it reasonable to assume that things could escalate. therefore, there is no break to the causal chain and Dave is the proximate cause of Peters harm. therefore, Dave is liable for negligence to Peter when he leaves without helping him.

Daves defense will be that he had no duty to Peter. this will not stand up per the above.

Dave v. Peter

Is Peter liable for Conversion of Dave's snakes?

Conversion is an intentional act which completely or very substantially interferes with another's right to possess chattel.

Peter intentionally bought the snakes, and it certainly completely interfered with Dave's rights of possession. Peter exhibited dominion and control over the chattel. Even though he innocently thought he was buying legally obtained snakes, he will be held liable for conversion. The remedy for conversion is a forced sale of the chattel for what it was worth at the time of the conversion. in essence, Peter will be made to pay for the snakes again.

Peters defense will be that he didn't know and had no intent. however, in Conversion that is not a defense.

If however Dave wants the snakes back, he may choose to pursue a cause for trespass to chattel.(TTC)

TTC is an intentional act which; impairs the condition quality or value of chattel or, results in a substantial interference with another's possession of chattel, or due to interference with chattel causes harm to plaintiff person, personal property or something in which plaintiff has a legally protected interest in. In this case, there was certainly an interference with possession and Dave could claim using this cause, get the snakes back, and try to claim for damages as well.

Is Peter liable for trespass to land when he sneaks onto Dave's Property.

Trespass to land is the intentional, unauthorized entry onto the land of another. All of the elements here are clear and present.

Is Peter liable for Intentional Infliction of Emotional Distress (IIED) for his arm waving

actions?

IIED is the intentional or reckless outrageous conduct directed at plaintiff or knowingly done in plaintiff's presence, which causes plaintiff severe emotional distress.

Certainly Peter is doing this intentionally and it is directed at Dave. Outrageous conduct is often described as shocking the conscious and that which would not be tolerated by society. It seems reasonable to assume that a jury would find Peter's actions outrageous. The question then becomes does Dave suffer severe emotional distress. The facts here only say that he is freaked out. Without more that is not enough. The distress would have to manifest itself in more physical ways - sleepless nights, nightmares, something more specific and concrete than 'freaked out'. This does not mean he has to have physical harm - just outwardly manifested symptoms.

END OF EXAM